

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRENDAN PICHA and MAX J. HASTINGS,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

GEMINI TRUST COMPANY, LLC, TYLER
WINKLEVOSS and CAMERON
WINKLEVOSS,

Defendants.

No.: 1:22-cv-10922-NRB
Hon. Naomi Reice Buchwald

**DECLARATION OF HEE-JEAN KIM IN SUPPORT OF
BRENDAN PICHA, MAX J. HASTINGS, KYLE MCKUHEN,
JAMES DEREK TAYLOR, AND CHRISTINE CALDERWOOD'S
MOTION FOR APPOINTMENT AS LEAD PLAINTIFFS
AND APPROVAL OF KIM & SERRITELLA LLP AS LEAD COUNSEL**

Hee-Jean Kim declares, under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am the managing partner at the law firm Kim & Serritella LLP ("K&S"), which represents Plaintiffs in the above-captioned action, and I respectfully submit this declaration in support of the motion of Brendan Picha, Max J. Hastings, Kyle McKuhen, James Derek Taylor, and Christine Calderwood (collectively, the "Investor Group") for: (i) appointment as lead plaintiffs; and (ii) approval of lead plaintiffs' selection of lead counsel.

2. K&S is a boutique firm that is considered one of the preeminent firms in the crypto space. We have earned this reputation through diligent study of the crypto sphere and by being among the first law firms to consistently bring novel cases in the space. We are contacted frequently by crypto investors seeking our counsel both in potential class actions and individual

suits. To that end, we have a record of success in representing investors in proceedings against crypto asset exchanges, cell phone carriers and related entities.

3. We are known for being ethical, diligent, and for truly standing behind our motto of always putting our clients first, even when client interests may not always result in the best economic result for K&S. We have contacts not only in the legal world, but also in the software development and crypto investigation spaces. When possible, we also give support gratis to people whose losses cannot feasibly be recovered through litigation, such as victims of certain types of complex hacks, or catfishing scams where it may be impossible to identify or serve a defendant without considerable forensic investigation.

4. I first became aware that investors in the Gemini Earn program were unable to access or withdraw their funds in the week following the November 16, 2022 freeze of the platform when several Gemini Earn investors, including Brendan Picha and Max Hastings, contacted K&S to see whether there was any way we could help them.

5. In the weeks before K&S filed this action, on December 27, 2022, and continuing to this day, we have been directly contacted by over 700 Gemini Earn investors. In order to serve the people who have contacted us, as well as those who may not have directly reached out, we have created a Gemini Earn page on our website dedicated to providing accurate and meaningful information about the action and class actions generally, and to keep the larger group apprised of developments relating to the case. The page is located at <https://www.kandslaw.com/crypto/gemini-earn-class-action/>. That page includes copies of major filings and is updated regularly.

6. I have personally spoken with over 100 Gemini Earn investors and have spent well over 100 hours on the phone with them. I have also corresponded with over 500 Gemini Earn

investors via email. What is most striking to me is that the majority of people I have spoken with are “normal” people with “normal” jobs—public school teachers, homemakers, college and graduate students, doctors, engineers, real estate brokers, accountants, small business owners, mechanics, and artists, among many others. The consistent theme is that they operated under the belief that the Gemini Earn program was safe, regulated, and comparable to a traditional savings account. Some have even told us that they received emails from Gemini stating that their assets were FDIC insured and regulated.

7. I have spoken to individuals who lost a few hundred dollars, a few hundred thousand dollars, and a few million dollars. For most, regardless of the dollar amount, the loss of access to funds in the Gemini Earn program has had a real and sometimes devastating impact on their lives. I have spoken with people who are unable to pay their mortgages, who struggle to keep up with their daily expenses, who have been forced to drop out of graduate school because they can no longer pay tuition, who fear for their futures because they are retired and had entrusted their pensions to the Gemini Earn program, and even who is now unable to pay for a loved-one’s cancer treatment. I have stayed up late into the night speaking with Gemini Earn investors who have sought treatment for severe depression and anxiety as a result of the loss of their funds.

8. Unfortunately, I have also heard from many Gemini Earn investors who are confused about the current state of this action. Investors have expressed uncertainty about “which class action” they should join, how they should “join” the class action, and whether they will miss their chance to “join” a class action (and thus lose their chance at some recovery) should they fail to engage a law firm. These misconceptions are not a result of Gemini Earn investors’ lack of familiarity with the legal process; they proliferate because certain unscrupulous lawyers have

disseminated explicitly misleading information in a bid to take over the action without having done any work on it.

9. It has been a disappointing revelation for me to see how lawyers, who are bound by ethical obligations, are willing to inflict further deception on investors who have already been misled into putting their hard-earned funds into the Gemini Earn program. In emails, engagement letters, advertisements, even some “news” articles from other law firms that have been forwarded to me by Gemini Earn investors, I have witnessed this deception first hand. Of course, I want my firm to be allowed to continue the work we have started, but I also do not want to see any of these people whose stories I have heard and whom I have come to know taken advantage of yet again. Should these lawyers appear in this action with lead plaintiff motions, K&S will provide the Court with additional information regarding their actions.

10. Everyone at K&S is extremely grateful and proud to have been selected by the Investor Group. Each member of the Investor Group is extremely intelligent, well-informed, curious, and dedicated to getting the best result for all Gemini Earn investors. K&S has had regular meetings with the Investor Group, including meetings to discuss and seek their input on case strategy and our written work. The Investor Group has also been in regular contact with each other apart from K&S. To varying degrees, they are very active on Telegram (Max having created the Gemini Earn group, Brendan having been an early member and leader, Christine also being one of the most vocal members, and Kyle and Derek being members and astute observers) as well as on other social media and information outlets.

11. The members of the Investor Group have demonstrated that they care deeply about the entire class of Gemini Earn investors. From the beginning, they have all been consistent in not wishing to serve alone because they desire to be able to reflect the wishes of the largest group

possible. They have also expressed concern over carrying the burden alone. The Investor Group's diligent attitude and clear awareness of the responsibility inherent in the role of lead plaintiff is further testament to their strength as representatives of the class.

12. To say that I am personally invested in the outcome of this case on behalf of the Gemini Earn investors is an understatement. To say that every person at K&S who has worked on this action is personally invested in the outcome of this case is also an understatement. My personal goal, shared by everyone at my firm, is to treat each investor with respect and compassion, to provide accurate, truthful guidance, and to provide that information with care. I truly believe that my firm is the best firm to represent these plaintiffs and this class in this action, not only because of how we have conducted ourselves in the past and the work and commitment we have put into this action, but also for how we will conduct ourselves as this action proceeds.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of knowledge.

Dated: February 27, 2023



Hee-Jean Kim